SEP 22 1956
JOHN T. FEY, Clerk

No. 441

In the Supreme Court of the United States

_____ Term, 19____

The Choctaw and Chickasaw Nations, *Petitioners*,

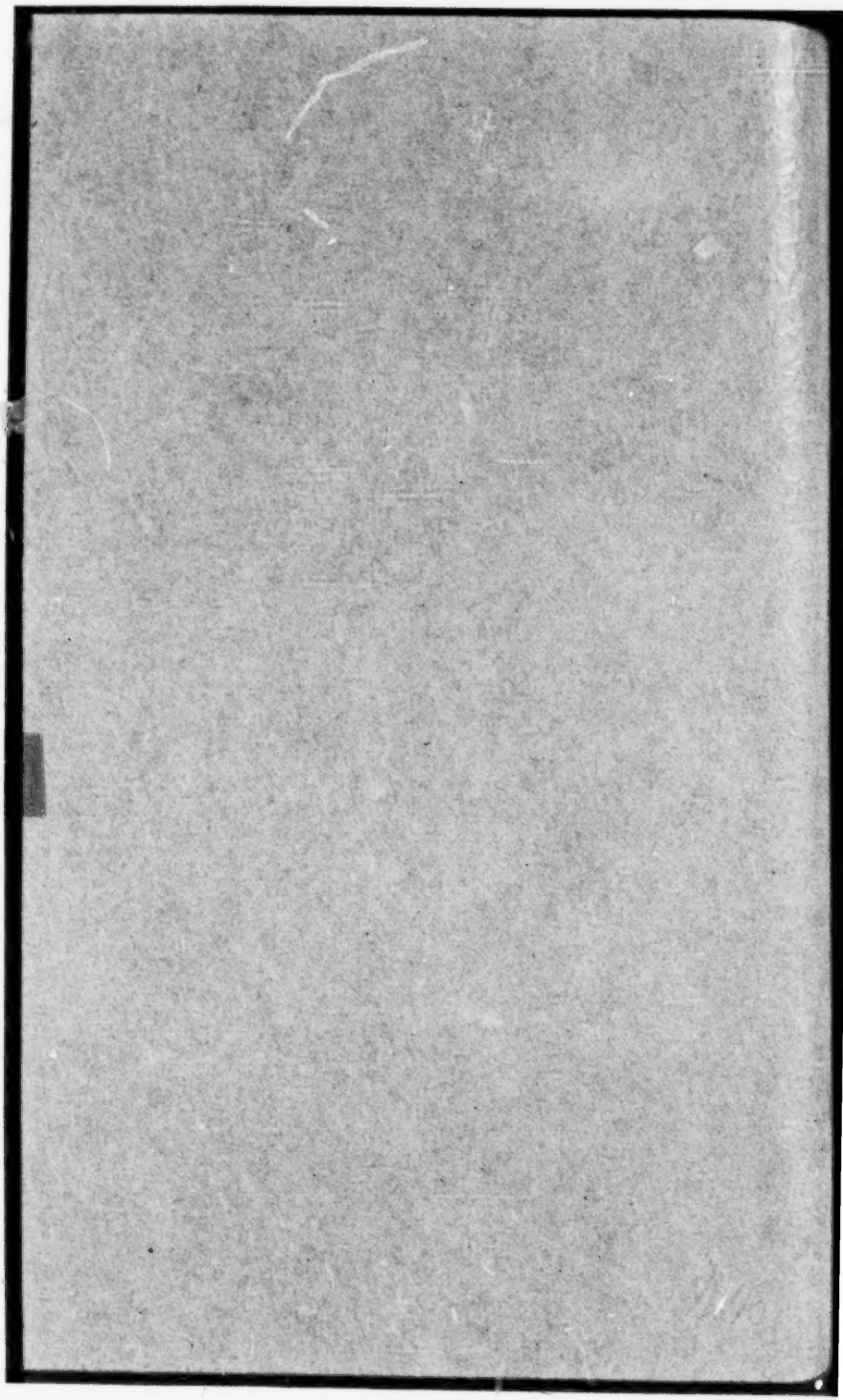
vs.

Wilmer D. Seay; J. B. Stoddard; Philip H. Broun; Bridwell Oil Company, a co-partnership composed of J. S. Bridwell, Margaret Browdle and Frank Browdle; Long, Yingling and Lauck, a co-partnership composed of M. J. Long, E. V. Yingling and D. R. Lauck; and Continental Oil Company, a corporation, *Respondents*.

PETITION for WRIT of CERTIORARI

To the United States Court of Appeals for the Tenth Circuit.

W. F. SEMPLE,
Attorney for Choctaw Nation;
LYNN ADAMS,
Attorney for Chickasaw Nation.



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IN THE SUPREME COURT OF THE UNITED STATES.

..... Term, 19.....

No. .....

The Choctaw and Chickasaw Nations, *Petitioners,*

vs.

Wilmer D. Seay; J. B. Stoddard; Philip H. Broun; Bridwell Oil Company, a co-partnership composed of J. S. Bridwell, Margaret Browdle and Frank Browdle; Long, Yingling and Lauck, a co-partnership composed of M. J. Long, E. V. Yingling and D. R. Lauck; and Continental Oil Company, a corporation, *Respondents.*

PETITION *for* WRIT *of* CERTIORARI

To the United States Court of Appeals for the Tenth Circuit.

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Tenth Circuit entered on the 8th day of June, 1956.

Opinion Below.

The opinion of the Circuit Court of Appeals is not yet officially reported, but is attached hereto in the appendix.

The findings of fact and conclusions of law of the trial court are embodied in the transcript (Tr. 28).

Jurisdiction.

Jurisdiction is invoked under Title 28, U. S. C. A., Sec. 1254.

Jurisdiction of the trial court invoked: *Creek Nation* v. *United States,* 318 U. S. 629, 63 S. Ct. 784, 87 L. ed. 1046.

Mr. Justice CLARK as of August 13, 1956, signed an order extending the time to file petition for certiorari to and including September 26, 1956.

Question Presented.

The question presented is whether one Wilmer D. Seay, a purchaser of unallotted lands situated on the left bank of Red River, sold by the United States Government in 1912, for the use and benefit of the Choctaw and Chickasaw Nations, acquired title as a riparian land owner to the entire bed of Red River.

Treaties and Federal Statutes Involved.

1. There is no dispute between the parties as to the early treaties between the United States and the Choctaw Nation, by which all lands here involved were originally ceded to the Choctaw Nation. These are set out in the opinion below, and to void repetition are not repeated here.

2. Pertinent acts of Congress are:

(*a*) Act of May 26, 1930, 56 Stat. 385:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized in his discretion to lease for oil and gas purposes any or all of the remaining tribal lands of the Chickasaw and Choctaw Nations, including the lands lying south of the medial line of Red River to the south bank thereof, east of the ninety-eighth meridian, and down Red River to three miles below the mouth of Little River which empties itself into Red River on the north side, upon such terms and conditions, after public competitive bidding and under such rules and regulations as he may prescribe: Provided, That nothing herein contained shall prevent the sale of any or all of

said tribal lands in accordance with provisions of existing law."

(*b*) Sec. 1, Act of May 11, 1938, 52 Stat. 347:

"Hereafter unallotted lands within any Indian reservation or lands owned by any tribe, group, or band of Indians under Federal jurisdiction, except those specifically excepted from the provisions of this section by Section 396f of this title, may, with the approval of the Secretary of the Interior, be leased for mining purposes, by authority of the tribal council or other authorized spokesmen for such Indians, for terms not to exceed ten years and as long thereafter as minerals are produced in paying quantities."

Statement of Case.

The Choctaw and Chickasaw Nations, petitioners herein, sued in the United States Court for the Eastern District of Oklahoma for an accounting and to quiet title in the Nations to the area in Red River between the center of the stream and the south bank of the said river, contending that that area did not pass to Wilmer D. Seay, respondent, by virtue of his purchase of the unallotted tracts of land in question. Pertinent treaties showing that the Nations acquired title to their common domain are detailed in the opinion below. Suffice it to say that no question arises as to the basic title of the Choctaw and Chickasaw Nations in the entire bed of Red River. See opinion of Attorney General of the United States, July 12, 1927; Opinions of Attorney General, Vol. 35, p. 251; *Oklahoma* v. *Texas,* 258 U. S. 583, 66 L. ed. 775.

Under the Act of July 1, 1902, (Sec. 14) 32 Stat. 641, the United States Government assumed the burden of allotting the lands of the Choctaw and Chickasaw Nations in severalty and of disposing of all of the unallotted lands

after allotments to tribal members had been completed. On November 15, 1912, pursuant to a notice given by the Government, certain unallotted lands of the Choctaw and Chickasaw Indians were advertised for sale in Jefferson County, Oklahoma, under a notice entitled "Government Sale of Indian Lands—Absolute Title Given." (Tr. 42) Respondent purchased four tracts at that sale. Each tract was referred to in the notice as containing so many acres, and the appraised value per acre was set forth. A patent was issued to Wilmer D. Seay, respondent herein, describing the lands as set forth in the notices and stating that the acreage conveyed contained 495.44 acres, more or less, according to the United States Survey thereof (Tr. 53). Petitioners concede that Seay as purchaser of unallotted lands bordering on the left bank of Red River would take, as a riparian owner, to the center of the stream, but petitioners deny that the patent to Seay carried any further than that.

At the time of the purchase by Seay (1912) the Oklahoma authorities were claiming that Red River was a navigable stream and that title was in the State of Oklahoma. Texas authorities were asserting title to the South half of the river; and the United States claimed title as lands that had never been ceded to the Indian Tribes. These conflicting claims were not settled until this Court on May 1, 1922, rendered its decision in *Oklahoma* v. *Texas*, 258 U. S. 583, 66 L. ed. 775, holding the river to be non-navigable and finding that the entire bed of the river belonged to the two Indian tribes. A further statement of the facts involved is deemed unnecessary, and reference is made to the statement in the opinion below.

REASONS FOR GRANTING THE WRIT.

1. The lands here involved originally constituted a part of the common domain of the Choctaw and Chickasaw Nations. They were, pursuant to treaty stipulations, advertised for sale and sold as Government lands.[1] Therefore, it is believed that the opinion below is in clear conflict with decisions of this Court holding that in sales of Government lands, nothing passes by implication or intendment.[2] The instant patent issued to respondent Seay contained no language that evidenced an intention on the part of the Government to pass title to any lands other than as set out in the patent, nor are there any circumstances existing at the time that would warrant the assumption that the entire bed

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1. See Sec. 14 of Act of Congress of July 1, 1902, 32 Stat. 641, ratified September 25, 1902, as the Supplemental Treaty; Announcement of sale of Government lands (Tr. 42).

2. 42 Am. Jur., p. 812; 73 C. J. S., p. 894. In Sioux City & St. Paul R. Co. v. United States, 159 U. S. 349, 40 L. ed. 177, it is said:

> "If the terms of an Act of Congress granting public lands admit of different meanings, one of extension and the other of limitation, they must be accepted in the sense favorable to the grantor. And if the rights claimed under the Government be set up against it, they must be so clearly defined that there can be no question of the purpose of Congress to confer them."

See also, Ainsa v. United States, 161 U. S. 230, 40 L. ed. 680, 74 A. L. R. (Ann.) 603; Leary v. Jersey City, 189 Fed. 419, 248 U. S. 328, 63 L. ed. 271, 39 S. Ct. 115.

See Central Transportation Co. v. Pullman Palace Car Co., 139 U. S. 49, 35 L. ed. 64. There the Court summed up the law in this language:

> "By a familiar rule, every public grant of property or of privileges or franchises, if ambiguous, is to be construed against the grantee and in favor of the public: because an intention on the part of the government to grant to private persons, or to a particular corporation, property or rights in which the whole public is interested, cannot be presumed, unless unequivocably expressed or necessarily to be implied in the terms of the grant. * * *"

of Red River was intended to be passed with the upland that was advertised for sale. On the contrary, it was public information that the Oklahoma authorities were claiming full title to the bed of Red River, and the Oklahoma Supreme Court eventually sustained that contention in an opinion handed down February 16, 1915.[3] The State of Texas likewise was claiming title for its residents from the center of the stream to the South bank; and the United States was asserting title as against all litigants.[4] The opinion of the Attorney General dated July 12, 1927, supplemented and was based upon the decision of this Court in *Oklahoma* v. *Texas*, 258 U. S. 587 (May 1, 1922), where it was held that the entire bed of the river belonged to the Choctaw and Chickasaw Nations as a part of their tribal domain.[5] The opinion of this Court, holding the river to be non-navigable and ruling out the claim of the United States as well as the claims of the States of Texas and Oklahoma, said (as to navigability):

> "So the real question in this connection is whether the river is navigable in Oklahoma.
>
> "The State relies on the third article of the Treaty of 1819 between the United States and Spain (8 Stat. 252) as conclusively establishing the navigability of that section of the river * * *."

It is clear that at the time of the sale to Seay, it was not known that the tribes had title to any part of the river bed. The adverse claims of the United States and of Texas and Oklahoma were not settled until this Court handed down the opinion in *Oklahoma* v. *Texas* on May 1, 1922.

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3. Hale v. Record, 44 Okl. 803, 146 Pac. 587.
4. See Attorney General's Opinions, Vol. 35, p. 251.
5. Attorney General's Opinions, Vol. 35, p. 251.

2. It is also believed that the opinion below is in direct conflict with the opinion of this Court in *Securities Land & Exploration Co.* v. *Burns.*[6] The situation with which we are here concerned is almost a perfect parallel. Here the Government advertised four tracts of land, among others, giving the exact acreage in each tract and the appraised value thereof.[7] The patent to the respondent Seay clearly shows that the lands described were the several tracts with exact acreage given as set out in the Government notice of sale.[8] But Seay and his oil and gas lessees herein assert claim to an area that was not advertised for sale, and one that was involved in conflicting claims as to ownership. In the light of these facts, it could not be presumed that the agents of the Government in selling these lands were not cognizant of the adverse and conflicting claims involving the entire bed of Red River. Mr. Justice VAN DEVANTER in writing the original opinion of the case said:

> "After we acquired jurisdiction of the suit, it developed that the State of Oklahoma was claiming title to the entire river bed, from one bank to the other; that the State of Texas as claiming to the Southerly half; that the United States as disputing the claims of both

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6. 193 U. S. 182, 48 L. ed. 672. There this Court said:

> "The patentees, it must be borne in mind, got all of the land they really purchased and paid for as laid down by the lines and distances set forth in the survey and as stated in the patents. * * *"

Again, in the same case this Court said:

> "Upon the facts, the question recurs, whether the patentees by reason of the general rule above mentioned, took these lands which they now claim, although they never in reality bought or paid for them. We think they did not."

7. See tracts as advertised under Notice of Sale of Government Lands (Tr. 42, 45).

8. See Tr. 55.

parties and asserting full proprietorship to the Southerly half and an interest, because of its relation to the Indian allottees, in portions of the Northerly half."

3. It is further believed that the opinion below falls into serious error when it is said that *Leary* v. *Mayor and Aldermen of Jersey City* was affirmed by this Court on the point that where the grantor owns the entire bed of the stream but no part of the upland on the opposite bank, the grant will be construed to convey to the grantee the entire bed of the stream. This Court did not pass upon that question in its opinion but affirmed the case on other grounds. The opinion below also cites as supporting the views announced in this case two Georgia cases, styled *Young* v. *Harrison*, 6 Ga. 130, and *Jones* v. *The Water Lot Company*, 18 Ga. 539. Neither of these cases presents a parallel situation with the facts here involved, and we respectfully submit that the court below was in error in holding that a grantee in a Government patent would take the entire bed of the river in circumstances such as are presented here. The State of Oklahoma was claiming the entire bed of the river as a navigable stream, Texas was claiming the South half as riparian to Texas land owners, and the United States was claiming against all litigants. We have found no reported cases in the books sustaining the proposition contended for by respondents, and we respectfully submit that there is no common law rule implying that a grantee of a riparian land owner takes farther than the center of the stream.

United States v. *Champlin Refining Company*, 156 F. 2d 769, relied upon by the court below is not in point, as there no controversy existed as to the ownership of the entire bed of the Arkansas River, and the question simply was

whether a riparian land owner under the common law rule would take to the center of the stream.

4. From the date of the passage of the Curtis Act[9] the United States Government by virtue of that act and the supplemental act of July 1, 1902, *supra*, has had exclusive jurisdiction of the management, control and disposition of the tribal properties of petitioners, and in such relationship the Congress has acted under its plenary powers, and the courts are confined to the limits of these acts of Congress in ascertaining the intent of patents issued and acts of the Secretary of the Interior. The Act of May 26, 1930, *supra*, is a Congressional interpretation of the ownership of the bed of Red River, pointing clearly to the intention of the Congress to authorize the leasing of the South half of the river for oil and gas mining purposes by the Secretary of the Interior. The opinion below speculates to the effect that the Nations may have owned lands on the North bank of the river and for that reason it was necessary to pass legislation authorizing the leasing of the area between the center of the stream and the South bank. If as a matter of law the theory of the opinion below was sound, there would be no need for legislation to clothe the Secretary with authority to lease the area between the center of the stream and the South bank, as that right (applying the theory of the opinion below) would be implied by reason of the ownership of land on the North bank. But the opinion properly observes that the record is silent as to whether the Nations own lands on the North bank. Under such facts we respectfully submit that the conclusions of the Court of Appeals are not sound and that the assumption that it was necessary to have authority to lease the area between the center

9. Act of June 27, 1898, 32 Stat. 495.

of the stream and the South bank by reason of ownership of lands on the North bank, is not well grounded. Such process of reasoning defeats the very purpose of the Act of 1930, *supra,* clothing the Secretary with undoubted authority to lease the entire South half of Red River from the 98th Meridian to the Arkansas line, as lands of the two Indian nations. This Court has given great weight to Congressional interpretations.[10] Here the Government by virtue of Indian treaties and acts of Congress was the sole administrator of the estates of these two dependent tribes of Indians, thus giving increased weight to the general rule that subsequent legislation may be considered in interpreting prior legislation on the same subject.

In the Act of 1930, *supra,* there is a clear distinction made (obvious by a mere glance at the act) between remaining unallotted land tracts of these nations and the area between the center of the stream and the South bank. The opinion below erroneously interprets the Act of 1930 as authorizing the leasing of areas between the center of the stream and the South bank only where such parts of the river would be appurtenant to unallotted land tracts of uplands on the North bank of the river. It is believed that theory obviously does not have any support in the language that the Congress actually used, as the act made a separate classification of the area between the center of the stream and the South bank through the length of the river from

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10. Great Northern v. United States, 315 U. S. 272, 62 S. Ct. 535.

See also, Tiger v. Western Investment Co., 221 U. S. 286, 55 L. ed. 738, where this Court said that subsequent Congressional legislation may be considered as an aid in interpreting prior legislation. In the Tiger case these same Indian nations were involved.

See Lone Wolf v. Hitchcock, 187 U. S. 553, and U. S. v. Kagama, 118 U. S. 375, on the proposition that the United States acts as trustee and guardian for its Indian wards.

the 98th Meridian and the Arkansas line, thus differentiating it entirely from unallotted lands.

5. It is believed that the court below falls into error in stating that its conclusions are supported by a number of administrative interpretations. It is clear that the opinion of Solicitor Maston White of the Interior Department takes the view that as of 1940 the bed of Red River is subject to be leased for oil and gas mining purposes as the property of the Choctaw and Chickasaw tribes and not as property belonging to riparian land owners on the North bank. See Tr. 69-72. In two instances (offered as showing the interpretation of the law by the Interior Department) are Departmental leases approved by the Secretary on areas between the center of the river and the South bank. See Tr. 72, 80. The opinion below speculates that such leases could have been made, due to the ownership by the tribes of unallotted lands on the North bank, but that is not supported by the language of the leases themselves. It was the obvious purpose to describe areas in Red River without reference to unallotted uplands on the North bank. Evidently Solicitor White did not accept the opinion of Attorney General Mitchell (35 Atty. Gen. Opin.) as holding that riparian land owners on the North bank had title to the river bed. On the contrary, he held that under the Act of May 11, 1938 (25 U S. C. A. 1946, Sec. 396a) the Secretary had jurisdiction to lease lands in the bed of Red River as lands of these petitioners.

The Soyster letter of October, 1929 (Tr. 20), has no value as a Departmental interpretation on the ownership of the bed of the river as he merely refers to the Attorney General's opinion and says that the Attorney General's opinion "simply referred to the question of whether or not the title

to the south half of the river was held by the United States or the Chickasaw-Choctaw Indian Tribes." (Tr. 21) At the time of the Attorney General's opinion (1927) the Acts of Congress of 1930 and 1938, treating the Indian tribes as owners of the South Half of the river, had not been passed. All that is decided in the Attorney General's opinion is that the United States had no title to any part of the river bed. He was not called upon to decide whether in the 1912 sales of unallotted lands the Government intended by the notices of sales to pass title to any lands other than those described in the notices. It is not reasonable to assume that the Government intended to sell as property of these Nations when it was the position of the Government that the entire bed of Red River belonged to the United States. It is to be presumed that the Act of 1930, providing for the leasing of the South Half of the river as property of the Nations, took cognizance of the decision of this Court in *Oklahoma* v. *Texas* and the Attorney General's opinion holding that the United States had no title to any part of the riverbed.

Wherefore, Petitioners respectfully pray that the writ of certiorari issue to review the ruling of the Court of Appeals.

Respectfully submitted,

W. F. SEMPLE,
Attorney for Choctaw Nation;

LYNN ADAMS,
Attorney for Chickasaw Nation.

APPENDIX.

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

No. 5284—May Term, 1956.

Filed United States Court of Appeals, Tenth Circuit, June 8, 1956. Robert B. Cartwright, Clerk.

THE CHOCTAW and CHICKASAW NATIONS,
Appellants,
v.
WILMER D. SEAY; J. B. STODDARD; PHILIP H. BROUN; BRIDWELL OIL COMPANY, a co-partnership composed of J. S. BRIDWELL, MARGARET BROWDLE and FRANK BROWDLE; LONG, YINGLING and LAUCK, a co-partnership composed of M. J. LONG, E. V. YINGLING and D. R. LAUCK; and CONTINENTAL OIL COMPANY, a corporation, Appellees.

Appeal from the United States District Court for the Eastern District of Oklahoma.

(Received August 1, 1956, Legal Dept., Tulsa.)

W. F. Semple (Lynn Adams and Lee Welch were with him on the brief) for appellants.

Richard R. Linn (Richard D. Stone, S. J. Montgomery, John E. Kilgore for Kilgore & Kilgore, W. M. Cleaves for Cleaves & Cleaves, Dwight L. Simmons, for Thompson, Knight, Wright & Simmons, R. O. Wilson, Harry Dippel were with him on the brief) for appellees.

Before BRATTON, Chief Judge, PHILLIPS, Circuit Judge, and ROGERS, District Judge.

[OPINION.]

PHILLIPS, Circuit Judge:

The Choctaw and Chickasaw Nations brought this action to quiet the title to certain lands extending from the

medial or center line of Red River and the southern or right-hand bank of such river and lying opposite Lot 1 of Section 10 and Lots 3, 4 and 5 of Section 3, all in Township 7 South, Range 5 West, Jefferson County, Oklahoma.

The Choctaw and Chickasaw Nations claim title to all of the lands between the medial line and the south or right bank of Red River, extending from the 98th meridian east to the boundary line between Arkansas and Oklahoma.

Seay, a defendant below, claims title in fee to the lands above described and to a royalty interest under oil and gas leases given by him as lessor of such lands. The other defendants below claim through Seay as lessees or as owners of overriding royalty interests.

On October 18, 1820, a treaty (7 Stat. 210) was entered into between the United States and the Choctaw Nation, by which the Nation ceded to the United States certain lands in the State of Mississippi in exchange for "a tract of country west of the Mississippi River, situate between the Arkansas and Red River." The treaty specifically described the tract of land ceded to the Choctaw Nation as follows:

> "* * * beginning on the Arkansas River, where the lower boundary line of the Cherokee strikes the same; thence up the Arkansas to the Canadian Fork, and up the same to its source; thence due South to the Red River; thence down Red River, three miles below the mouth of Little River, which empties itself into Red River on the north side; thence a direct line to the beginning."

Thereafter, it was discovered that a part of the tract last above described, lying east of what is now the boundary line between the States of Oklahoma and Arkansas, was occupied by white settlers. Thereupon, by the treaty of January 20, 1825 (7 Stat. 234), the Choctaw Nation receded to the United States that part of such tract which lies east of such boundary line.

The Act of Congress of May 28, 1830 (4 Stat. 411), authorized the President of the United States to offer lands

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west of the Mississippi River in exchange for other lands belonging to Indians who chose to make the exchange. Under the authority of this Act the treaty of September 27, 1830 (7 Stat. 333), was entered into, ceding to the Choctaw Nation the same lands as had been ceded by the treaty of October 18, 1820, excepting, however, the part of said tract lying east of the eastern boundary line of the State of Oklahoma. Such land was described in the treaty as follows:

> "* * * beginning near Fort Smith where the Arkansas boundary crosses the Arkansas River, running thence to the source of the Canadian fork; if in the limits of the United States, or to those limits; thence due south to Red River, and down Red River to the west boundary of the Territory of Arkansas; thence north along that line to the beginning."

To settle misunderstandings which had arisen between the Choctaw and the Chickasaw Nations, a treaty was entered into between the two nations on January 17, 1837 (11 Stat. 573), by which a district for the Chickasaw Nation was created and described as follows:

> "* * * beginning on the north bank of Red River, at the mouth of Island bayou, about eight or ten miles below the mouth of False Wachitta, thence running north along the main channel of said bayou to its source; thence along the dividing ridge between the Wachitta and Low Blue rivers, to the road leading from Fort Gibson to Fort Wachitta; thence along said road, to the line dividing Mushallatubbee and Pushmatahaw districts; thence, eastwardly, along said district line, to the source of Brushy Creek; thence, down said creek, to where it flows into the Canadian River, ten or twelve miles above the mouth of the south fork of the Canadian; thence, west, along the main Canadian River, to its source, if in the limits of the United States, or to those limits; and thence, due south to Red River, and down Red River to the beginning."

LOSE IN CENTER

Pursuant to the Act of May 28, 1830, *supra,* a patent was issued on March 23, 1842, conveying to the Choctaw Nation the tract described in the treaty of 1830.

Disagreements continued to exist between the Government of the United States and the Choctaw Indian Nation, and on June 22, 1855 (11 Stat. 611), a new treaty, by its terms superseding all former treaties between the United States and the Choctaws and also superseding all treaty stipulations between the United States and the Chickasaws and between the Choctaws and Chickasaws inconsistent with it, was made, in which the territorial limits of the Choctaw and Chickasaw Indian Nations were described as follows:

> "* * * beginning at a point on the Arkansas River, one hundred paces east of old Fort Smith, where the western boundary line of the State of Arkansas crosses the said river, and running thence due south to Red River; thence up Red River, to the point where the meridian of one hundred degrees west longitude crosses the same; thence north along said meridian to the main Canadian River; thence down said river to its junction with the Arkansas River; thence down said river to the place of beginning."

Out of this a district for the Chickasaws was established, described as follows:

> "* * * beginning on the north bank of Red River, at the mouth of Island Bayou, where it empties into Red River, about twenty-six miles on a straight line, below the mouth of False Wachitta; thence running a northwesterly course along the main channel of said bayou, to the junction of the three prongs of said bayou, nearest the dividing ridge between Wachitta and Low Blue Rivers, as laid down on Capt. R. L. Hunter's map; thence northerly along the eastern prong of Island Bayou to its source; thence due north to the Canadian River; thence west along the main Canadian to the ninety-eighth degree of west longitude; thence south to

Red River; and thence down Red River to the beginning."

Thus, it will be observed that by a series of treaties beginning in 1820, the land ceded to the Choctaws was uniformly described as extending "to Red River" and bounded on the south by a line running "down Red River" or "up Red River."

In 1898, Congress enacted the so called Curtis Act (30 Stat. 495). That act provided for the allotment of the lands of the Five Civilized Tribes without the consent of the tribes. Thereafter, the five civilized tribes entered into treaties with the United States for the allotment of their lands. The Atoka Agreement, a treaty entered into by the Choctaws and Chickasaws with the United States, and which became a part of the Curtis Act, provided for the allotment of the land of the Choctaws and Chickasaws. However, a more comprehensive scheme for the allotment of such lands and the sale of the residue, or unallotted lands, was provided for in the Act of July 1, 1902 (32 Stat. 641), which was thereafter ratified by the Choctaws and Chickasaws as a supplemental treaty. Sections 12 and 13 of the last-mentioned act deal with allotment of lands to members of the two tribes. Section 14 provides for the sale by the United States of the lands remaining after all allotments had been made. After the allotments were completed, unallotted land sales were had in different parts of the Choctaw and Chickasaw Nations.

In 1898, the tribal lands of the Choctaw and Chickasaw Nations were surveyed, preparatory to the allotment of the land in severalty to the tribal members. The survey comported with the standards followed in the survey of Federal public lands. It included such Lots 1, 3, 4 and 5. In running the survey along the Red River, the Government surveyors meandered the north bank of the river and did not extend the survey lines in the river beyond the meander line thus established. Such Lots 1, 3, 4 and 5 extend northward from such meander line. The acreage of such lots, as

shown by the survey, was computed by determining the area lying above the meander line and the other boundaries of such lots.

The four lots referred to above were advertised for sale at Ryan, Oklahoma, on November 15, 1912. The notice of sale described them as fractional lots, set forth the total acreage in each lot, in accordance with the survey, and fixed a minimum price.

At such sale Seay purchased such lots. He completed the payment of the purchase price therefor in 1917 and on September 25, 1917, an unallotted deed was issued to him in which such lots were described as follows:

> "* * * Lots One (1), * * * Three (3), Four (4) and Five (5) * * * of Section Three (3) * * * and Lots One (1) * * * of Section Ten (10) * * * Township Seven (7) South and Range Five (5) West, of the Indian Base and Meridian, in Oklahoma, containing Four Hundred Ninety-five and 40/100 (495.40) acres, more or less, as the case may be, according to the United States survey thereof."

The acreage, as recited in the deed, was the acreage as shown by such survey of such lots and other lands included in the deed.

Grants by the United States of its public lands bounded on non-navigable streams, made without reservation or restriction, showing an intent to restrict the conveyance to the upland, are to be construed as to their effect according to the law of the state in which the lands lie. As regards such conveyances, the United States assumes the position of a private owner, subject to the general law of the state.[1]

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1. United States v. Champlin Refining Co., 10 Cir., 156 F. 2d 769, 773, aff. 331 U. S. 788;
Hardin v. Shedd, 190 U. S. 508, 519;
Hardin v. Jordan, 140 U. S. 371, 384;
Whitaker v. McBride, 197 U. S. 510, 512.

The same rule applies where the United States disposes of tribal lands of Indians under guardianship.[2]

The common law, as modified by the constitutional and statutory law, judicial decisions and the conditions and wants of the people, remains in force in Oklahoma.[3]

Under the common law, a grant of land bounded on a non-navigable river by a grantor who owns to the center or thread of the stream conveys to the grantee the land to the center or thread of the stream, unless the terms of the grant and the attendant circumstances clearly denote an intention to stop at the edge or margin of the river.[4]

When, however, the grantor owns the entire bed of the stream, but no part of the upland on the opposite side, in the absence of a clear indication of a contrary intention from the terms of the grant and the attendant circumstances, the grant will be construed to convey to the grantee the entire bed of the stream.[5]

The rule is bottomed on two reasons: (1) A grantor will be presumed not to have reserved a strip of land covered by water, which would be of little practical value to him; (2) It is a wise public policy, to prevent vexatious litigation likely to arise from retention of title to the river

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2. Oklahoma v. Texas, 258 U. S. 574, 395;
   United States v. Champlin Refining Co., 10 Cir., 156 F. 2d 769, 773, aff. 331 U. S. 788.
3. 12 O. S. A., Perm. Ed., Sec. 2;
   Oklahoma City v. District Court of 13th Judicial District, 168 Okl. 235, 32 P. 2d 318, 320.
4. United States v. Elliott, 10 Cir., 131 F. 2d 720, 723;
   United States v. Champlin Refining Co., 10 Cir., 156 F. 2d 769, 774, aff. 331 U. S. 788;
   Oklahoma v. Texas, 258 U. S. 574, 595;
   Note, 74 A. L. R. 597.
5. Leary v. Mayor and Alderman of Jersey City, 3 Cir., 189 F. 419, aff. 248 U. S. 328;
   Young v. Harrison, 6 Ga. 130, 141;
   Jones v. The Water Lot Co., 18 Ga. 539, 541.

bed in the grantor, on the happening of some unexpected event.[6]

The Supreme Court of Oklahoma has adopted and applied the common law rule.[7]

We, therefore, conclude that the grant to the Choctaws and Chickasaws conveyed title to them to the south bank of the stream. This conclusion is supported by a well considered opinion of the Attorney General to the Secretary of the Interior, under date of July 12, 1927 (see 35 Opinions of the Attorney General, p. 251).

It has been the policy of the Federal Government, from its origin, in disposing of the public land bordering on non-navigable streams to measure the price to be paid for it by the quantity of upland granted and to make no charge for land under the bed of a stream. To carry out that policy, meander lines are run in surveying fractional portions of land bordering upon non-navigable rivers, not as boundaries of the tracts, but for the purpose of defining the sinuosities of the banks of the stream and to ascertain the quantity of land in the fractions for which a purchaser is to be charged.[8]

The practice of the Federal Government in surveying

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6. United States v. Champlin Refining Co., 10 Cir., 156 F. 2d 769, 774, aff. 331 U. S. 788;
   Paine v. Consumers' F. & S. Co., 6 Cir., 71 F. 626, 629.

7. State v. Warden, 200 Okl. 613, 198 P. 2d 402;
   Braddock v. Wilkins, 182 Okl. 5, 75 P. 2d 1139;
   Phillips Petroleum Co. v. Davis, 194 Okl. 84, 147 P. 2d 135;
   Cuneo v. Champlin Refining Co., 178 Okl. 198, 62 P. 2d 82, 87.

8. United States v. Elliott, 10 Cir., 131 F. 2d 720, 724;
   Hardin v. Jordan, 140 U. S. 371, 380, 381;
   Railroad Company v. Schurmeir, 7 Wall. 272, 286, 287;
   Braddock v. Wilkins, 182 Okl. 5, 75 P. 2d 1139, 1140, 1141;
   State v. Warden, 200 Okl. 613, 198 P. 2d 402, 404, 405.

   See also:
   Alliott v. Wilmington L. & P. Co., 288 Ill. 541, 123 N. E. 731, 734;
   Sizor v. City of Logansport, 151 Ind. 626, 50 N. E. 377;
   Tucker v. Kruse, 126 Minn. 214, 148 N. W. 60.

public lands bordering on non-navigable streams was adopted and followed in surveying the four lots described above.

Section 14 of the Act of July 1, 1902, clearly indicated a purpose and intent on the part of Congress to dispose of all of the residue of lands remaining after the allotments provided for in such Act had been made to all citizens or freedmen of the Choctaw and Chickasaw Nations.

This was in keeping with a policy clearly manifest by the Congress, which looked to the allotment of tribal lands to individuals and the gradual termination of the tribes as entities.[9]

We conclude that there was nothing in the language of the deed to Seay or the attendant circumstances to indicate an intention to reserve any portion of the river bed in the tribes. The only fact that can be pointed to in support of such an intention is the reference to the survey in the deed and the fact that the survey embraced a meander line. When the purpose for running a meander line and the function of such a line is understood, we think no intention to retain the river bed can be inferred from the reference to the survey, which embraced a meander line.

The conclusions we have reached are supported by a number of administrative interpretations, evidenced by opinions and letters of the Department of Interior.[10]

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9. See United States v. Hayes, 8 Cir., 20 F. 2d 873, 878-887, c.d. 275 U. S. 555.

10. Opinion of Attorney General of July 12, 1927, 35 Opinions of the Attorney General 251;

Solicitor's Opinion, Department of Interior, to the Secretary of the Interior, under date of March 25, 1926, in which it was expressly held that the entire river bed passed to allottees who were allotted lands extending northward from the north bank of the river and to the grantees of lands purchased at unallotted land sales, where such lands extended northward from the north bank of the river;

Opinion of Commissioner Ipry of the General Land Office to Department of Interior, April 2, 1928, involving the particular lands here in controversy;

A letter dated October 22, 1929, from the Supervisor of the Geological Survey and a letter dated November 29, 1929, from the Superintendent of the Five Civilized Tribes, holding that the allottees and grantees of the land along the north bank of the Red River in Oklahoma own the river bed to the south bank of the river.

Counsel for the tribes rely strongly on the Act of May 26, 1930 (46 Stat. 385), which authorized the Secretary of the Interior "to lease for oil and gas purposes any or all of the remaining tribal lands of the Chickasaw and Choctaw Nations, including the lands lying south of the medial line of Red River to the south bank thereof, east of the ninety-eighth meridian, and down Red River to three miles below the mouth of Little River which empties itself into Red River on the north side.

The record discloses that in 1929 the Chickasaws and Choctaws had approximately 104,000 acres of unallotted lands. It may well be that some of these lands adjoined the north bank of the river. In that case the tribes would own lands extending to the south bank.

Counsel for the tribes also rely upon the fact that the Secretary of the Interior approved two oil and gas leases executed by them on portions of the south half of the river in July and September, 1953, but the record is silent as to the ownership of the adjacent lands on the north bank of the river. It may well be that such adjacent lands were remaining tribal lands, never having been allotted or sold.

At the oral argument, counsel for the tribes admitted the significant fact that no leases had been made or approved under the 1930 Act upon lands lying south of the medial line of the river, where opposite lands adjoining the north bank of the river had been sold and conveyed under unallotted land sales.

We conclude, therefore, that Seay acquired title to that portion of the river bed here in controversy.

The judgment is AFFIRMED.